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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Interconnection and Resale Obligations)
Pertaining to Commercial Mobile Radio)
Services)

CC Docket No. 94-54

To: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

The Association of Communications Enterprises ("ASCENT"), acting pursuant to Section 1.429(g) of the Commission's rules, hereby replies to the oppositions of Alloy LLC ("Alloy"), the Cellular Telecommunications Industry Association ("CTIA"), and Verizon Wireless ("Verizon") to ASCENT's Petition for Reconsideration (the "Petition") of the Commission's *Fourth Report and Order* in the above-referenced docket.¹ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, FCC 00-253 (July 24, 2000) ("*Fourth Report and Order*" or "*Order*").

Introduction & Summary

ASCENT's Petition revolves around the need to clarify and, to the extent necessary, change the meaning and scope of certain decisions rendered by the Commission in the *Fourth Report and Order*. In the *Order*, the Commission stated (1) that neither statutory provisions nor precedent required the Commission "to mandate interconnection" between the switch of a

¹ WorldCom, Inc. ("WorldCom") filed comments in support of the Petition.

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wireless reseller and the network of a Commercial Mobile Radio Service (“CMRS”) provider and (2) that “the public interest does not support the establishment of a rule requiring that facilities-based CMRS carriers interconnect with reseller switches.” *Order* at ¶¶ 9, 19. The *Order* thus appeared to foreclose forever any Commission consideration of an individual request from a wireless reseller to interconnect its switch with a CMRS provider’s network, a result that would fly in the face of the Commission’s clear obligations under Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. §§ 201(a) & 332(c)(1)(B).

Although they oppose the Petition, CTIA and Verizon agree with ASCENT that Sections 201 and 332 *do* require the Commission to consider future individual interconnection requests from wireless resellers. CTIA and Verizon complain, however, that the Petition is unnecessary because the *Order* did not purport to foreclose consideration of such individual interconnection requests. The nub of CTIA’s and Verizon’s opposition, in short, is not with the merits of the relief requested by ASCENT’s Petition but with the need for such relief.

The Wireless Telecommunications Bureau’s subsequent summary dismissal of two pending interconnection complaints from wireless resellers, however, confirms ASCENT’s reading of the *Fourth Report and Order* and the need for relief. The Bureau action relied solely on the *Order*’s decision not to adopt a rule or to otherwise “mandate” interconnection between a wireless reseller switch and the network of CMRS provider.

For its part, Alloy contends that the grant of any individual interconnection request is barred by Section 251(c) of the Act, which requires incumbent local exchange carriers (“ILECs”) to unbundle network elements. That argument is misguided. Nothing in Section 251(c) alters the scope of Section 201(a), a proposition made clear by Congress in Section 251(i).

The Commission should forthwith issue a decision confirming the basic proposition on which ASCENT, CTIA and Verizon all agree: namely, that the Commission should and will entertain individual interconnection requests from wireless resellers and will, if the public interest dictates, grant such interconnection requests. In that way, the Commission can, as explained by WorldCom, facilitate technological advances, innovative products for consumers, efficient use of networks, and greater competition from wireless resellers in the provision of mobile telephone service. *See* WorldCom Comments at 4-5.

I. Individual Interconnection Requests From Wireless Resellers Must Be Considered

In 1994, wireless resellers had asked the Commission “to issue a policy statement that would recognize the right of a reseller to interconnect its own switch with a cellular carrier’s network and the concomitant obligation of the cellular carrier to engage in good faith negotiations for the establishment of such interconnection arrangements.” *Order* at ¶ 3 (footnote omitted). In disposing of that request in the *Fourth Report and Order*, the Commission observed that there was no statutory provision or precedent that would require the Commission to “mandate” interconnection between a wireless reseller switch and the network of a CMRS provider. *Order* at ¶ 9. The Commission further concluded that “the public interest does not support the establishment of a rule requiring that facilities-based CMRS carriers interconnect with reseller switches.” *Order* at ¶ 19. Nowhere in the *Order* did the Commission indicate, let alone state, that it would nonetheless remain available to consider individual interconnection requests from wireless resellers.

The tenor and substance of the *Order* thus created the impression that such interconnection requests would be rejected without consideration, an interpretation reinforced by the Wireless Telecommunications Bureau’s summary dismissal of two long-pending wireless

reseller interconnection requests. *See* Petition at 7 n.9. The Bureau did not consider the facts underlying those complaints when it summarily dismissed them. Rather, the decision was premised solely on the Bureau's view that the *Order* precludes consideration of requests for interconnection by wireless resellers in all circumstances.²

In its Petition, ASCENT explained that the Commission's refusal to consider future interconnection requests would run afoul of Sections 201(a) and 332(c)(1)(B) of the Act. The explicit language of those statutory provisions requires the Commission to consider individual interconnection requests and to make a determination based upon the particular facts presented whether interconnection is required. As WorldCom explains in its Comments, that approach is also required by the public interest. WorldCom Comments at 4. Unless they know that interconnection is a possibility, wireless resellers would undoubtedly refrain from making financial investments or pursuing technological advances that would enhance their services and lower consumer costs. *Id.* ASCENT's Petition therefore asked that the Commission "consider specific requests for interconnection on the facts presented. . ."³ Petition at 14-15.

Although they purport to oppose the Petition, neither CTIA nor Verizon challenge the relief requested by ASCENT. Indeed, both CTIA and Verizon argue that the Petition is superfluous because (1) the *Order* did not preclude Commission consideration of individual interconnection requests from wireless resellers in the future and (2) such consideration is in fact mandated by

² Verizon is incorrect in suggesting that the Bureau had conducted an analysis of the facts in those cases. Verizon Opposition at 6. The Bureau's entire discussion of the merits of the complaints is contained in one paragraph which does not discuss or analyze the facts of the complaints. *Cellnet Communications Inc. v. NewPar, Inc.*, DA 00-1660 (July 26, 2000) at ¶ 8.

³ Contrary to CTIA's incorrect statement, ASCENT does not agree with the other rulings in the *Order*. *See* CTIA Opposition at 3 n.9. Rather, the Petition was confined only to those areas where ASCENT seeks reconsideration. By filing a petition for reconsideration narrowly aimed at one aspect of the interconnection rights of wireless resellers, ASCENT did not and does not convey agreement with all other aspects of the *Order*.

Sections 201 and 332 of the Act. CTIA, for example, asserts “that there is no basis in the *Order* for the Petitioner to reasonably conclude that the Commission will not entertain individual requests for interconnection.” CTIA Opposition at 5. Verizon similarly observes that there is no passage in the *Fourth Report and Order* “that will prevent a reseller from demonstrating that particular facts may warrant reseller switch interconnection in a particular case” and that ASCENT “improperly interprets the *Fourth Report and Order* as foreclosing the ability of resellers to have the Commission consider whether particular circumstances may warrant reseller switch interconnection.” Verizon Opposition at 5, 8.

In contrast to CTIA and Verizon, Alloy argues that the Commission should not consider any future interconnection requests from wireless resellers. Alloy does not offer any analysis of Sections 201 or 332 to support its position. Instead, Alloy merely speculates that “[a]ny other ruling will result in the inundation of the Commission with *ad hoc* reseller switch interconnection requests. . .” Alloy Opposition at 7. Alloy does not cite any facts to support that speculation. There is thus no reason to believe that an acknowledgment of the Commission’s willingness to consider individual interconnection requests will create any administrative problems for the agency.⁴

⁴ The Oppositions of CTIA and Verizon provide perhaps the best rebuttal to Alloy’s procedural contention that ASCENT has failed to present a “material error of fact or law” which justifies reconsideration. See Alloy Opposition at 2-3. Although they contend otherwise, neither CTIA nor Verizon points to a specific statement in the *Fourth Report and Order* where the Commission explicitly acknowledges that it will consider future individual interconnection requests by wireless resellers. The difference of opinion among the opponents further demonstrate that the *Order* is susceptible to more than one interpretation. Consequently, ASCENT has satisfied any requirement to raise a new matter. It should also be noted that the decisions cited by Alloy (seeming to require dismissal of a reconsideration petition in the absence of new facts or argument) have no applicability to the instant situation. *Id.* at 2 n.2. Those decisions concerned the judicial reviewability of an agency decision not to reopen a record on reconsideration. That issue is not presented at this juncture. If and when ASCENT files any petition for review, the court will be asked to consider whatever aspects of the *Order* and any reconsideration order that may be warranted. *E.g.*, *Southwestern Bell Telephone Co. v. FCC*, 180 F.3d 307, 313 (footnote continued on next page)

In any case, it would not matter if Alloy's administrative concerns were factually justified. As CTIA and Verizon recognize, Sections 201 and 332 of the Act require the Commission to consider and, if warranted by the public interest, grant individual wireless reseller interconnection requests. The Commission should therefore use ASCENT's Petition to confirm that basic and largely undisputed principle of statutory construction. Such confirmation is particularly important because, contrary to Verizon's assertion, increased competition is not likely to "induce carriers to allow switch interconnection." Verizon Opposition at 3. Commercial incentives dictate that increased competition will encourage facilities-based carriers to continue to deny reseller interconnection requests in order to forestall the likelihood that their customers might migrate to the wireless reseller who has interconnected with the carrier's network and used that interconnection to develop an innovative service and/or lower costs.

II. Section 251 Does Not Insulate Carriers From Reseller Interconnection Requests

Alloy contends that ASCENT's Petition would "require resellers [sic] to offer unbundled network elements ('UNEs') and that, under Section 251(c) of the Act, "UNEs are only applicable to ILECs, not CMRS providers." Alloy Opposition at 7. Even assuming Alloy's contention is correct, it is irrelevant to the merits of ASCENT's Petition.

It is of course true that Section 251(c) requires only ILECs to provide unbundled access to their network elements. But nothing in that statutory provision precludes the Commission from requiring other carriers to unbundle their networks to allow physical interconnection if warranted by the public interest. That latter decision would be governed by Section 201(a) and, in adopting Section 251(c), Congress did not intend to modify or displace the

(D.C. Cir. 1999) (although court cannot review agency refusal to reopen record on reconsideration, the time for petitioner to seek judicial review of initial order is tolled until agency makes its decision on reconsideration).

requirements of Section 201(a). As the Petition points out, Section 251 explicitly states that “[n]othing in this section shall be construed to limit or otherwise affect the Commission’s authority under Section 201.” 47 U.S.C. § 251(i). *See* Petition at 9. As both CTIA and Verizon acknowledge, Section 201, in turn, requires the Commission to grant individual requests for interconnection supported by the public interest.

The Commission, in short, does not have the discretion to reject all reseller interconnection requests out of hand merely because the request might (if justified by the public interest) require unbundling. The Act does preserve the Commission’s discretion to order direct or indirect interconnection, but, as CTIA correctly observes, the decision on how to proceed “should be decided on a particularized basis after finding particular instances that support either course.” CTIA Opposition at 8.

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Conclusion

For the reasons given above and in ASCENT's Petition, it is respectfully requested that the Commission explicitly state that consideration will be given in the future to individual requests from wireless resellers to interconnect with the facilities of CMRS providers and that disposition of such requests will be based upon the particular facts surrounding the request.

Respectfully submitted,

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Dated: October 23, 2000

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2000, a copy of the foregoing Reply to Oppositions to Petition for Reconsideration was sent by first class mail, postage prepaid, to the following parties:

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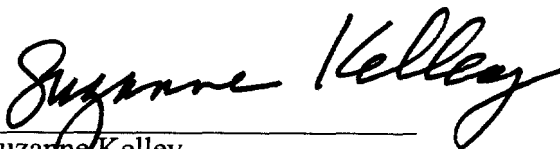
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